

SENATE BILL 2664
By Cooper

AN ACT to create a scrap tire program administered by the department to create a recycling fund for the processing and shredding of scrap motor vehicle tires to be funded by fees on the sale of new tires and civil penalties; to provide penalties for certain violations; and to provide an effective date.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known as the "Scrap Tire Recycling Act".

SECTION 2. As used in this act, unless the context otherwise requires:

(1) "Department" means the department responsible for the implementation of this act.

(2) "Business" means any trade, occupation, activity, or enterprise engaged in the sale of new tires in the state.

(3) "Dealer" means any person, firm, or corporation engaged within this state in the business of selling or offering for sale to the ultimate consumer new motor vehicle tires, including motor vehicles dealers licensed to sell new motor vehicles.

(4) "Elements" means the forces that constitute the weather.

(5) "Enforcement Scrap Tire" means any scrap tire that has been discarded that is not part of the daily waste stream generated from dealers, or that has not been deposited at a designated scrap tire collection site.

(6) "Enforcement scrap tire site" means a non-permitted tire storage area as identified by state authorities, or any site containing scrap tires which have been

disposed or discarded, and which is not a wholesale or retail dealer or a permitted scrap tire collection site.

(7) "Fund" means the Scrap Tire Recycling Trust Fund.

(8) "Motor vehicle" means an automobile, truck, van, bus, trailer, semi-trailer, truck-tractor and semi-trailer combination, recreational vehicle, or any other vehicle operated on the roads of this state, used to transport persons or property.

(9) "New tire" means an originally manufactured tire and shall not include any remanufactured, recapped, or otherwise restored tires.

(10) "Person" means any individual, firm, trust, partnership, company, corporation, association, state agency or local governing agency, or any public or private legal entity.

(11) "Place of business" means all contiguous land, buildings, structures, or other appurtenances, whether temporary or permanent, used in the business of selling, repairing, refitting, retreading, or otherwise handling new or used tires.

(12) "Processed tire" means a tire which has been shredded to a particle size of four square inches or less, to be made available for recycling or energy recovery.

(13) "Processing" means the act of shredding used or scrap tires which alters the form of the tires for the future extraction of useful materials for recycling or energy recovery, and which renders the tires unfit for use on a motor vehicle or for harborage of disease vectors.

(14) "Recycling" means any process by which scrap tires are collected, separated, stored, recovered, or processed and reused or returned to use in the form of raw materials or products.

(15) "Sale" means any transfer, exchange, or barter of new tires to the ultimate consumer in any manner or by any means whatsoever, for money or other consideration, including the giving of tires as gifts or for advertising purposes.

(16) "Scrap tire" means a tire that is no longer suitable for its original intended purpose or determined to be defective or unfit for use on a motor vehicle.

(17) "Scrap tire collection site" means a site, designated by the department, where used or scrap tires are collected from the public as a temporary storage site that stores less than 2,500 tires at any given time.

(18) "Scrap tire processing facility" means a permitted site where discarded scrap tires are collected or deposited for processing by shredding or other approved method, which alters the form of the tires for the future extraction of useful materials for recycling or energy recovery.

(19) "Scrap tire transporter" means any person who collects or transports more than ten (10) used or scrap tires, at any one time, in the state.

(20) "Tire" means a continuous solid or pneumatic rubber covering which is used for encircling the wheel of a motor vehicle.

SECTION 3.

(a) In order to adequately control disease vectors and other public health nuisances associated with transportation, storage, processing and disposal of scrap tires within this state, and to abate such nuisances menacing public health and the environment, the department is authorized to adopt rules for scrap tire management to include, but not be limited to, scrap tire storage, transportation, processing, and disposal practices and requirements; standards for scrap tire facility construction and management; financial responsibility; permitting requirements for scrap tire storage transportation and processing; documentation requirements for scrap tire processors or transporters.

(b) The Department of Revenue is authorized to adopt rules necessary for the administration, collection, reporting, and payment of fees payable or to be collected under this act.

(c) No person shall accumulate or store more than 100 scrap tire exposed to the elements at any site unless said person makes application for, and receives from the department, a tire storage permit pursuant to requirements of the rules of the department. Exceptions shall be made for:

(1) a tire dealer with no more than 1,000 scrap tires accumulated at the place of business at any one time;

(2) a tire retreader with no more than 2,500 scrap tires accumulated at the place of business at any one time;

(3) a service station where tires are removed from, or refitted to, motor vehicles with no more than 1,500 scrap tire accumulated at the place of business at one time; or

(4) other business as deemed appropriate by the department, provided that adequate measures for disease vector control are employed in accordance with rules adopted by the department. It shall be the responsibility of the owner/operator of the business to prevent the generation of disease vectors from the place of business.

(d) A scrap tire collection site shall not operate in this state except under a permit obtained from the department pursuant to the rules adopted.

(e) Any site upon which more than 100 tires are deposited, placed, or stored subject to the elements, whether permitted or not, whether publicly or privately owned, and which does not receive effective control of disease vectors shall be considered a public health nuisance and shall be subject to abatement procedures.

(f) No person shall process scrap tires in this state or receive payment under this act for collecting and processing scrap tires until the processor makes application for and receives a scrap tire processing permit from the department.

(g) It shall be unlawful for any person to dispose of whole tires at a landfill in this state, or at a site not permitted by the department to receive scrap tires.

SECTION 4.

(a) There is hereby levied, in addition to all other fees of every kind now imposed by law, and shall be collected as provided herein, upon every person, firm, or corporation (all of which may be referred to as a “dealer”) engaged within this state in the business of selling at retail, any vehicle tires of any type whatsoever,

(1) a fee of one dollar (\$1.00) per tire with a rim diameter of 17.5 inches or less.

(2) a fee of three dollars and fifty cents (\$3.50) for tires with a rim diameter greater than 17.5 inches but not more than 26 inches which shall be known as the “Scrap Tire Recycling Fee”. This levy shall be applied to all tires purchased for over-the-highway use at the time of sale including, but not limited to, tires used on passenger vehicles, pickup trucks, truck tractors, trailers of all kinds, recreational vehicles, motor homes, and motorcycles, tires with a rim diameter of not greater than 26 inches.

(3) at any time a motor vehicle with a rim diameter of 17.5 inches or less is first registered in this state, there shall be assessed a scrap tire fee of one dollar (\$1.00) per tire.

(4) at any time a motor vehicle with a tire rim diameter of greater than 17.5 inches is first registered in this state, there shall be assessed a scrap tire recycling fee of three dollars and fifty cents (\$3.50) per tire.

(b) Every dealer or motor license agent subject to the fee levied in subsection (a) above, shall charge every purchaser the amount of the designated fee for each tire purchased, which fee shall be separately stated on the invoice or bill of sale as the scrap tire recycling fee. It shall be unlawful for any dealer to fail or refuse to collect from the purchaser the amount required by this section to be collected, to refund or offer to refund all or any part of the amount collected, or to absorb or advertise directly or indirectly the absorption or refund of said amount or any portion thereof. The provision that the fee

herein levied shall be collected from the purchaser shall in no way relieve any dealer of the fee herein levied. Nor shall the inability, impracticability, refusal or failure to collect from such purchaser the amounts provided herein relieve such dealer of the fees herein levied. All fees paid in pursuance of this section shall be conclusively presumed to be a fee on the purchaser pre-collected for the purpose of convenience and facility only.

(c) The fee herein levied shall be due and payable to the department of revenue, together with forms prescribed and furnished by the department, on or before the twentieth (20th) day of the month next succeeding the month in which the fee accrued.

(d) The dealer or motor license agent shall remit such fees to be collected pursuant to this section in a manner prescribed in subsection (c) above to the department of revenue. Such dealer, who remits the fee due and payable in a time and manner required by rules adopted by the department of revenue, may retain two percent (2%) of said fee for such timely remittance.

(e) Failure to remit such fees at the time and in the manner prescribed by subsection (c) above shall cause the fees to become delinquent. If the fees become delinquent, the dealer shall forfeit his or her claim to the discount authorized by this section and shall remit to the department of revenue one hundred percent (100%) of the amount of the fee due, plus any penalty.

(f) The department of revenue is hereby authorized to promulgate such rules and regulations for making returns and for ascertainment, assessment and collection of the fee imposed by this act as the department may deem necessary to administer and enforce its provisions.

SECTION 5.

(a) A person who is required to and who does not file a report as provided by Section 4 of this act, or who possesses a fee collected or payable under that section and who does not remit the fee to the department of revenue at the time and in the manner required by that section and rules of the department of revenue, shall, in addition to

remitting one hundred percent (100%) of the fee due, pay a penalty of five percent (5%) of the amount of the fee due and payable. If the person does not file the report or pay the fee before the thirtieth (30th) day after the date on which the fee or report is due, the person shall pay a penalty of an additional five percent (5%) of the amount of the fee due and payable.

(b) The department of revenue may add a penalty of seventy-five percent (75%) of the amount of the fee, penalty, and interest due if failure to file the report or pay the fee when it becomes due is attributable to fraud or an intent to evade the application of this section.

SECTION 6.

(a) There is hereby created within the state treasury the "Scrap Tire Recycling Trust Fund". The fund shall be administered by the department of revenue pursuant to provisions of Section 7 of this act.

(b) The scrap tire recycling fund shall consist of:

(1) All monies received by the department of revenue as proceeds from the fees imposed pursuant to Section 4.

(2) Interest attributable to investment of money in the fund.

(3) Money received by the department of revenue in the form of gifts, grants, reimbursements, or from any other source intended to be used for the purposes specified by or collected pursuant to this act.

(c) The monies deposited in the fund shall at no time become part of the general budget of the department of revenue or any other state agency, except as provided for in Section 7 of this act. No monies from the fund shall be transferred for any other purpose, to any other state agency, or for reimbursing any other state agency for any expense.

(d) All monies in the fund are continuously appropriated to the department and the department of revenue, respectively, to be utilized or disbursed as specified in this act.

SECTION 7. All monies in the fund are hereby continuously appropriated to the department or to the department of revenue to be utilized or dispersed as specified in this act.

(a) Of the monies accruing annually to the fund, the funds may be only used to pay:

(1) The department's reasonable and necessary administrative costs of performing its duties under this act in an amount not to exceed six percent (6%) of the money annually accruing to the fund.

(2) The department of revenue's reasonable and necessary administrative costs of performing the department of revenue's duties under this act in an amount not to exceed two percent (2%) of the money annually accruing to the fund.

(b) The remaining monies in the fund shall be allocated pursuant to the provisions of this act:

(1) to a permitted scrap tire processing facility which, through the filing of appropriate applications, reports, and other documentation that may be required by the department, demonstrates that such a facility has successfully collected and processed scrap tires, in a manner approved by the department, and made the processed tires available for recycling or energy recovery;

(2) to fund special priority projects for the clean-up of enforcement scrap tire sites and other related projects under the supervision of the department, and contingencies as authorized by the department; and

(3) Upon receipt of the scrap tire processor's application for payment, the department shall have ten (10) days to process the application and upon approval shall submit the payment voucher to the department of revenue, who

shall have up to seven (7) days review and upon approval shall make payment to the scrap tire processor.

SECTION 8.

(a) A scrap tire processor who processes scrap tires pursuant to the requirements of this act and the rules adopted under this act, and who files application for payment in a manner prescribed by the rules of the department, shall be paid from the fund at a rate of four and eight tenths (\$.048) per processed pound.

(b) In order to qualify for payment under this act, the processor shall demonstrate with each request for payment that:

(1)(A) all scrap tires collected have been processed into a particle size of four (4) square inches or less;

(B) or, upon approval by the department, a particle size set by a contract requirement related to recycling or end use.

(2) scrap tires that are processed at the facility will be sold, supplied, or used for recycling or energy recovery.

(c) Upon receipt of the scrap tire processor's application for payment, the department shall process the application and upon approval shall make payment from the fund to the scrap tire processor at a rate of four and eight tenths (\$.048) per processed pound.

(d) The reporting activities of the scrap tire processor shall be documented in terms of weight. The processed tire weight shall determine the amount of compensation.

(e) The scrap tire processing facility shall implement a statewide collection and transportation network in accordance with rules adopted by the department and shall collect scrap tires from dealers, landfill collection sites, municipal and county designated collection sites, and deliver said tires to the scrap tire processing facility.

(f) The scrap tire processing facility shall offer to collect and transport scrap tires at no additional cost to the participating dealers.

(g) No person shall charge or assess a fee for the collection of scrap tires to a scrap tire processor who collects or transports scrap tires under a permit from the department.

(h) The department shall not require a scrap tire processing facility to collect less than 1,000 scrap tires at any one route or location.

(i) Scrap tire processors in this state shall utilize, or make available for use, the reusable, recyclable, and valuable materials in scrap tires for reuse, recycling, or energy recovery.

(j) The department shall adopt rules that specify requirements for making application for payment from the scrap tire recycling trust fund for collecting and processing scrap tires.

(k) Scrap tire facilities are not eligible for compensation if such facilities have accumulated processed material in amount greater than that for which they have provided financial assurance under their solid waste permit.

SECTION 9.

(a) The department shall identify unauthorized tire dumps that present existing or potential threat to public health or the environment and shall prepare an enforcement list of those dumps.

(b) Enforcement scrap tire sites shall include, but not be limited to, the following:

(1) An accumulation of one hundred (100) or more scrap tires at any non-permitted storage site above ground and subject to the elements, or which have not been housed or buried.

(2) A scrap tire collection site used by state, county, or municipal agencies to deposit enforcement scrap tires collected from roadways, waterways,

or from public or private properties on which scrap tire stockpiles have been determined to be a nuisance to public health or the environment.

(3) Any other tire storage site, whether permitted or not, which has been determined by the department to cause a nuisance menacing public health.

(c) The department shall rank the enforcement scrap tire sites by county, size, and potential threat to public health or the environment.

(d) Owners or operators of scrap tire stockpiles, or of property upon which such stockpiles are situated, shall, within six (6) months after the effective date of this act, notify the department of location, size and ownership of said stockpile, with an estimate of the quantity of scrap tires therein.

(e) If the department deems accumulations of scrap tires, either whole, split, chopped, quartered, or shredded, to pose a potential threat to public health or to the environment, then said department may classify these sites as special priority sites and may allocate additional funding to the scrap tire processor towards the cleanup of these sites provided that:

(1) Sufficient funds have accumulated to cover the associated cost of cleanup operations.

(f) The department is authorized to assess fees or penalties associated with an enforcement scrap tire site towards a responsible party if the department deems the action necessary.

SECTION 10.

(a) No permits for scrap tire processing facilities or for scrap tire collection sites shall be issued unless financial assurance is posted by the owner of such facilities with the department to provide for the cleanup or closure of such facilities and for emergency remediation of a public health nuisance menacing public health or the environment.

SECTION 11. A scrap tire processing facility may not claim payment for acceptance or processing of scrap tires generated out-of-state.

SECTION 12.

(a) Any person violating any provision of this act or any rule, regulation or order made pursuant to this act shall, upon conviction thereof, be fined a penalty of not less than two hundred dollars (\$200.00) and not more than ten thousand dollars (\$10,000) per violation. Each day such violation continues shall constitute a separate violation.

(1) The department may bring a civil suit for an injunction to prevent or restrain a violation of this act.

(2) Any person affected or to be affected by a violation is entitled to seek injunctive relief to enjoin the violation.

(3) In a civil action for relief under this subsection, the department or plaintiff may recover his, her or its reasonable attorney fees, court costs, and reasonable investigative costs incurred in relation to the proceeding.

(4) Venue for a prosecution of a criminal offense under this act or for a civil action for injunctive relief or damages under this act is in the county in which the defendant resides or is doing business, or the county in which the offense or violation occurred.

(b) A person may be assessed an administrative penalty by the department, as provided by this act, including costs associated therewith, if the person violates this act or rule, regulation, or order made pursuant to this act, and no local government has instituted a civil action and is diligently prosecuting same against the same person for the same violation under subdivision (2) of this section.

(1) In determining the amount of administrative penalty to be imposed, the department shall consider the following factors:

(A) The economic benefit gained from such violation.

(B) The economic viability of the violator.

(C) The severity of the violation, including any real or potential injury to persons or property, or public health.

(D) The compliance history of the violator and record of previous violations.

(E) Efforts taken by the violator to correct the violation.

(F) Amount of penalty needed to deter future violations.

(G) Other matters that justice may require.

(2) At no time shall an administrative penalty fall below the amount of economic benefit gained by violation of the law.

(c) Any penalties imposed and collected pursuant to this act, less any costs for attorney, or other reasonable associated costs, shall be deposited to the credit of the scrap tire recycling fund.

(d) The department may issue orders to any permittee, licensee, or any person in violation of this act or any rule adopted and promulgated under this act. Such orders shall be enforceable as against such permittee, licensee, or violator.

(e) If the department finds that the operation of a scrap tire processing facility or a scrap tire collection center subject to the provisions of this act is in violation of any provision of this act, or any rule or regulation made pursuant to this act, or any order of the department or any term or condition of any permit issued pursuant to this act, or might reasonably be expected to cause pollution of the land, air or waters of the state, or is creating a public nuisance or otherwise threatens human or animal health or the environment, the department may bring action for mandatory or prohibitive injunctive relief in the circuit court of the state having jurisdiction over the property on which the violation occurred or is expected to occur. In any such proceeding, the court shall issue the injunction if it finds that the defendant is engaging in unlawful conduct as defined by this act or is engaged in conduct which is causing immediate and irreparable harm to the public. The department shall not be required to furnish bond or other security in connection with such proceedings. In addition to an injunction, the court in such proceedings may levy civil penalties as appropriate.

SECTION 13. Not later than three (3) years after passage of this act, and every three (3) years thereafter, the department shall report to the governor, and the general assembly on the administration of the program established under this act and its effectiveness in cleaning up existing tire dumps and in preventing new dumps.

SECTION 14. All laws or parts of laws which conflict with this act are repealed.

SECTION 15.

(a) This act takes effect upon becoming a law. The fees imposed by this act shall apply to all new tires sold on or after July 1, 1996.

(b) The payments authorized by this act shall apply to scrap tires processed on or after the one hundred eightieth (180th) day following the effective date of this act.